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APRIL WHETSTONE
WHITLEY COUNTY RECORDER
COLUMBIA CITY, IN

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06/11/2012 03:01:42PM

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 4 day of JUNE 2012, by Chaffee Rentals LLP (together with all successors and assignees, collectively "Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Whitley, Indiana, which is located at 589 U.S. 33 South, Churubusco, Indiana 46723, and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. This Real Estate was acquired by deed on May 21, 1985, and recorded on May 23, 1985, as Deed Record 85-5-229, in the Office of the Recorder of Whitley County, Indiana. The Real Estate consists of approximately 43.69 acres and has also been identified by the county as parcel identification number 92-04-13-000-238.000-010. The Real Estate, to which the restrictions in this Covenant apply, is depicted on a map attached hereto as Exhibit B.

WHEREAS: Corrective action under the Resource Conservation and Recovery Act (RCRA) was conducted in accordance with IC 13-22 and other applicable Indiana law as a result of a release of hazardous constituents relating to the BRC Rubber Group, Inc. facility, U. S. EPA ID No. IND005081526.

WHEREAS: The RCRA corrective action activities conducted, as approved by the Indiana Department of Environmental Management ("Department"), provide that the contaminant of concern, arsenic, will remain in the soil and ditch sediments of the Real Estate. The Department has determined that the residual arsenic contamination will not pose an unacceptable risk to human health at the remaining concentrations, provided that the land use restrictions contained herein are implemented and maintained. Exhibit B shows the sample locations where arsenic was detected over the Department's default residential closure level of 3.9 parts per million (milligrams per kilogram).

WHEREAS: Environmental investigation and remediation reports, verification samplings reports and other related documents are hereby incorporated by reference and may be examined at the offices of the Department, which is located in the Indiana Government Center North building at 100 N. Senate Avenue, Indianapolis, Indiana. The documents may also be viewed electronically in the Department's Virtual File Cabinet by accessing

the Department's Web Site (currently www.in.gov/idem/), and searching under the BRC Rubber Group, Inc. U.S. EPA ID No. IND005081526.

NOW THEREFORE, Chaffee Rentals LLP subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

I. RESTRICTIONS

1. Restrictions. The Owner:

- (a) Shall not use or allow the use of the Real Estate for recreational or residential purposes, including, but not limited to, athletic fields, daily child care facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
- (b) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to: human or animal consumption, gardening, industrial processes, or agriculture, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
- (c) Shall not use the Real Estate for any agricultural use.
- (d) Shall restore soil disturbed as a result of excavation and construction activities in such a manner that the remaining contaminant concentrations do not present a threat to human health. This determination shall be made using the Department's Remediation Closure Guide (RCG) and Remediation Program Guide (RPG), or successor guidance. Upon the Department's request, the Owner shall provide the Department written evidence (including sampling data) showing the excavated and restored area, and any other area affected by the excavation, does not represent such a threat. Contaminated soils that are excavated must be managed in accordance with all applicable federal and state laws, and disposal of such soils must be done in accordance with all applicable federal and state laws.

II. GENERAL PROVISIONS

- 2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees and their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control (hereinafter "Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in or right to occupancy in all or any part of the Real Estate by any person shall affect the restrictions set

forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.

3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent Owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of monitoring compliance with this Covenant and ensuring its protectiveness; this right includes the right to take samples and inspect records.
5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED _____ 2012, RECORDED IN THE OFFICE OF THE RECORDER OF WHITLEY COUNTY ON _____, 2012, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and: (a) include a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if it has been recorded, its recording reference, and (c) the name and business address of the transferee.
7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. ENFORCEMENT

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate IDEM if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, IDEM shall have the right to request

specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

IV. TERM, MODIFICATION, AND TERMINATION

9. Term. The restrictions shall apply until the Department determines that the contaminants of concern no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Whitley County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

11. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner of its obligation to comply with any other applicable laws.
13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, RCG or RPG guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:
589 US 33 South
P.O. Box 227
Churubusco, IN 46723
Attn: Chuck Chaffee

To Department:
IDEM, Office of Land Quality
100 N. Senate Avenue
IGCN 1101
Indianapolis, IN 46204-2251
Attn: Section Chief, Hazardous Waste Permit Program

An Owner may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail.

15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

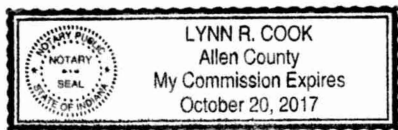
IN WITNESS WHEREOF, Chaffee Rentals LLP, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 4 day of June, 2012.


Chaffee Rentals LLP
CHARLES CHAFFEE,
PRESIDENT

STATE OF Indiana)
) SS:
COUNTY OF Allen)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Charles Chaffee, the PRESIDENT of the Owner, Chaffee Rentals LLP, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 4th day of June, 2012.



Lynn R Cook, Notary Public

Residing in Allen County,

My Commission Expires: Oct. 20, 2017

SIGNATURE: [Signature]

This instrument prepared by: Therese M. Williams, 111 East Wayne Street, Suite 800, Fort Wayne, Indiana 46802.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: JULIA E. HARBER

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

Part of the Southeast Quarter of Section 13, Township 32 North, Range 10 East, Whitley County, Indiana, more particularly described as follows:

Beginning at the Southeast corner of the Southeast Quarter of Section 13, Township 32 North, Range 10 East, Whitley County, Indiana; thence West along the South line of the SE ¼ of Section 13-32-10, a distance of 1637.0 feet; thence North with a deflection angle to the right of 85 degrees 50 minutes 50 seconds, a distance of 444.1 feet (445 feet deed); thence Northeasterly with a deflection angle to the right of 80 degrees 20 minutes 30 seconds a distance of 3.1 feet to the Southeast corner of a 3.28 acre tract; thence Northerly with a deflection angle to the left of 87 degrees 49 minutes 30 seconds along the East line of said 3.28 acre tract; a distance of 404.4 feet to the Northeast corner of said 3.28 acre tract; thence West with a deflection angle to the left of 91 degrees 18 minutes 40 seconds along the North line of said 3.28 acres tract, a distance of 290.0 feet to a point on the East right-of-way line of State Highway #33; thence North with a deflection angle to the right of 90 degrees 25 minutes 10 seconds along said right-of-way line, a distance of 50.97 feet; thence Easterly with a deflection angle to the right of 91 degrees 37 minutes 20 seconds a distance of 401.63 feet; thence Northeasterly with a deflection angle to the left of 12 degrees 48 minutes 40 seconds a distance of 309.21 feet; thence Southeasterly with a deflection angle to the right of 36 degrees 18 minutes 20 seconds, a distance of 456.72 feet; thence Easterly with a deflection angle to the left of 16 degrees 22 minutes 20 seconds a distance of 304.2 feet; thence Northeasterly with a deflection angle to the left of 49 degrees 14 minutes 30 seconds a distance of 256.0 feet; thence Easterly with a deflection angle to the right of 45 degrees 08 minutes 30 seconds a distance of 456.8 feet to a point on the East line of the SE ¼ of Section 13-32-10; thence South with a deflection angle to the right of 96 degrees 38 minutes 40 seconds along the East line of the Southeast Quarter of Section 13-32-10 a distance of 1310.84 feet to the point of beginning, containing 43.69 acres of land.

EXHIBIT B
RESTRICTED AREA MAP

